



Fast Track Proposed Regulation Agency Background Document

Approving authority name	State Air Pollution Control Board
Primary action	9VAC5-10
Secondary action(s)	None
Regulation title	Regulations for the Control and Abatement of Air Pollution
Action title	Definition of Volatile Organic Compound (G09)
Document preparation date	September 14, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The general definitions of 9VAC5-10 impose no regulatory requirements in and of themselves but provide support to other provisions of the Regulations for the Control and Abatement of Air Pollution (9VAC5-10 through 9VAC5-80). The definition of volatile organic compound (VOC) has been revised to add two substances that have been demonstrated to be less reactive to the list of substances that are not considered to be VOCs: propylene carbonate and dimethyl carbonate.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On September 3, 2009, the State Air Pollution Control Board took final action to adopt amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution," specifically, General Definitions (9VAC5-10). The regulatory action is to be effective as provided in the Administrative Process Act provided the proposal completes the fast-track process as provided in § 2.2-4012.1 of the Act and the Department does not find it necessary to make any changes to the proposal.

Legal basis

Please identify the state and/or federal source of the legal requirements that necessitate promulgation of the proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal requirements and the extent to which the requirements are mandatory or discretionary.

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Written assurance from the Office of the Attorney General that the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments is available upon request.

Promulgating Entity

The promulgating entity for this regulation is the State Air Pollution Control Board.

Federal Requirements

Section 109 (a) of the Clean Air Act requires EPA to prescribe national ambient air quality standards (NAAQS) to protect public health. Section 110 mandates that each state adopt and submit to EPA a plan (the state implementation plan or SIP) which provides for the implementation, maintenance, and enforcement of the NAAQS. Ozone, one of the pollutants for which there is a NAAQS, is in part created by emissions of VOCs. Therefore, in order to control ozone, VOCs must be addressed in Virginia's SIP.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of SIPs. Subpart F of Part 51, Procedural Requirements, includes § 51.100, which consists of a list of definitions. 40 CFR 51.100 contains a definition of VOC. This definition is revised by EPA in order to add or remove VOCs as necessary. If, for example, it can be demonstrated that a particular VOC is "negligibly reactive" (that is, if it can be shown that a VOC is not as reactive or makes a significant contribution to ozone formation), then EPA may remove that substance from the definition of VOC.

On January 21, 2009 (74 FR 3437), EPA revised the definition of VOC in 40 CFR 51.100 to exclude two substances from the definition of VOC: propylene carbonate and dimethyl carbonate. This exclusion is accomplished by adding the substances to a list of substances not considered to be a VOC. This change to the exemption list became effective on February 20, 2009.

State Requirements

These specific amendments are not required by state mandate. Rather, Virginia's Air Pollution Control Law gives the State Air Pollution Control Board the discretionary authority to promulgate regulations "abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth" (§ 10.1-1308 A). The law defines such air pollution as "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people or life or property" (§ 10.1-1300).

Purpose

Please explain the need for the new or amended regulation and the potential consequences that may result in the absence of the regulation. Detail the specific reasons the regulation is essential to protect

the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the regulation (general definitions) is not to impose any regulatory requirements in and of itself, but to provide a basis for and support to other provisions of the Regulations for the Control and Abatement of Air Pollution, which are in place in order to protect public health and welfare. The proposed amendments are being made to ensure that the definition of VOC, which is crucial to most of the regulations, is up-to-date and scientifically accurate, as well as consistent with the overall EPA requirements under which the regulations operate.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The definition is being revised to add two less-reactive substances to the list of compounds not considered to be VOCs. As discussed elsewhere, this revision is not expected to affect a significant number of sources or have any significant impact, other than a positive one, on air quality overall. Additionally, removal of the substances at the federal level was accompanied by detailed scientific review and public comment, and no negative comments were received during the federal public comment period. Therefore, no additional information on the reactivity of these substances or the appropriateness of their removal is anticipated.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The general definitions impose no regulatory requirements in and of themselves but provide support to other provisions of the Regulations for the Control and Abatement of Air Pollution (9VAC5-10 through 9VAC5-80). The list of substances not considered to be VOCs in Virginia has been revised to include propylene carbonate and dimethyl carbonate.

Issues

Please identify the issues associated with the proposed regulatory action, including: (1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; (2) the primary advantages and disadvantages to the agency or the Commonwealth; and (3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

1. Public: The general public health and welfare will benefit because the revision may encourage the use of products containing the less-reactive substances in place of products containing more reactive and thereby more polluting substances, ultimately resulting in fewer emissions of VOCs and reduced production of ozone, which results from VOC emissions. Companies that use these substances in place of more reactive substances may also benefit by reducing their VOC emissions and concomitant reductions in permitting and other regulatory requirements.
2. Department: The revision will allow the department to focus VOC reduction strategies on substances that are more responsible for ozone formation.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The proposed regulation amendments are not more restrictive than the applicable legal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

Public participation

Please include a statement that in addition to any other comments on the regulation, the agency is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community, and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the department is seeking comments on the costs and benefits of the proposal, the impacts on the regulated community, and impacts of the regulation on farm or forest land preservation. Also, the department is seeking information on impacts to small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include (1) projected reporting, recordkeeping and other administrative costs, (2) probable effect of the proposal on affected small businesses, and (3) description of less intrusive or costly alternative methods of achieving the purpose of the proposal.

Anyone wishing to submit written comments may do so by mail, email, or fax to the staff contact listed below. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at www.townhall.virginia.gov. Written comments must include the full name, address and telephone number of the commenter and be received by the Department by 5:00 p.m. on the date established as the close of the comment period. Commenters submitting faxes are encouraged to provide the signed original by postal mail within one week.

All comments requested by this document must be submitted to the agency contact: Karen G. Sabasteanski, Policy Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia, 23218 (email karen.sabasteanski@deq.virginia.gov, fax 804-698-4510).

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: (1) the establishment of less stringent compliance or reporting requirements; (2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) the consolidation or simplification of compliance or reporting requirements; (4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposal; and (5) the exemption of small businesses from all or any part of the requirements contained in the proposal.

The regulations apply to all facilities, including small businesses. Any (1) establishment of less stringent compliance or reporting standards; (2) establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) consolidation or simplification of compliance or reporting requirements; (4) establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; or (5) exemption of small businesses from all or any part of the requirements contained in the proposed regulation for all small businesses would directly, significantly and adversely affect the benefits that would be achieved through the implementation of the regulations.

Economic impact

Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the information specified below. Also include a description of the beneficial impact the regulation is designed to produce.

<p>a. Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures.</p>	<p>It is not expected that the regulation will result in any cost to the department beyond that currently in the budget. The sources of department funds to carry out this regulation are the general fund and the federal trust (grant money provided by the U.S. Environmental Protection Agency under § 105 of the federal Clean Air Act or permit fees charged to affected entities under the permit program). The activities are budgeted under the following program (code)/subprogram (code): (i) Environmental and Resource Management (5120000)/Air Quality Stationary Source Permitting (5122000) and Air Quality Stationary Source Compliance Inspections (5122100) and (ii) Environmental Research and Planning (5130000)/Air Quality Research and Planning (5130700). The costs are expected to be ongoing.</p>
<p>b. Projected cost of the regulation on localities.</p>	<p>The projected cost of the regulation on localities is not expected to be beyond that of other affected entities and is addressed in item e below.</p>
<p>c. Description of the individuals, businesses or other entities likely to be affected by the</p>	<p>Propylene carbonate is used in cosmetics, as an adhesive component in food packaging, as a</p>

<p>regulation.</p>	<p>solvent for plasticizers and synthetic fibers and polymers, and as a solvent for aerial pesticide application. Dimethyl carbonate may be used as a solvent in paints and coatings, or in waterborne paints and adhesives. It is also used as a methylation and carbonylation agent in organic synthesis, and can be used as a fuel additive.</p>
<p>d. Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are no known sources located in Virginia that currently use these substances. There are sources that may some day eventually wish to use these substances; however, the department has not identified any specific sources that plan to do so.</p>
<p>e. All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>Because there are currently no known sources in the state using these substances, no source would realize any cost savings associated with the removal of the substance as a VOC. A source that is not currently using these substances but at some point does choose to do so may realize a cost savings; in the absence of any currently interested sources, the department has no way of quantifying any potential savings.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Alternatives to the proposed regulation amendments were considered by the department. The department determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulation. The alternatives considered by the department, along with the reasoning by which the department has rejected any of the alternatives being considered, are discussed below.

1. Amend the regulations to satisfy the provisions of the law and associated regulations and policies. This option was chosen because it meets the stated purpose of the regulation: to protect public health and welfare through the reduction of ozone-creating substances.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option was not chosen because it would not meet the stated purpose of the regulation.
3. Take no action to amend the regulations and continue to use an outdated definition in the regulations. This option was not chosen because it would not meet stated purpose of the regulation.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: (1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; (2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; (3) strengthen or erode the marital commitment; and (4) increase or decrease disposable family income.

It is not anticipated that these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9VAC5-10-20		Definition of VOC does not include propylene carbonate and dimethyl carbonate on the list of substances not considered to be VOC.	Revise definition of VOC to include propylene carbonate and dimethyl carbonate on the list of substances not considered to be VOC. Needed for public health and welfare benefit, and consistency with federal requirements.